



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

March 3, 2004

AO-04-03

Christopher A. Kenney, Esq.
Sherin and Lodgen LLP
100 Summer Street
Boston, MA 02110

RE: Application of M.G.L. c.55, §13 to Special Assistant Attorneys General

Dear Mr. Kenney:

This letter is in response to your request for an opinion regarding the extent to which your appointment as a Special Assistant Attorney General (SAAG) may restrict your political activity pursuant to M.G.L. c. 55, § 13.

You have stated¹ that you are engaged in the private practice of law as a partner at Sherin and Lodgen LLP in Boston. In 2000, you were retained by AIG, the insurer for the Central Artery/Tunnel Project, to represent the Massachusetts Highway Department (the MHD) in two civil actions on claims arising from construction activity on the Project. To represent the Commonwealth, you were appointed as a SAAG for the limited purpose of defending the MHD in these lawsuits. Your SAAG appointment, however, is specifically limited to these cases, and dissolves upon their resolution.

You further stated that AIG pays you for your work representing the MHD. You receive no salary or benefits from the Attorney General's Office or the MHD for your work as a SAAG. You report to a claims representative at AIG and to an assistant attorney general regarding the status, strategy and developments in the cases; however, all of your work is done at your law firm's private offices. You set your own hours, provide your own equipment, supplies and facilities, and use your firm's associates, paralegals and support staff.

¹ As requested, this letter is issued to supplement OCPF's guidance letter GL-02-10. The factual background outlined in this letter accordingly reflects statements you made in your April 1, 2002 letter, as well as your February 9, 2004 letter.

You have asked for clarification of whether, while a SAAG, you may participate in soliciting or receiving contributions, or in hosting or working at a fundraising event for a candidate for public office at the local, state or federal level. You would not, however, participate in fundraising or other political activity for the Massachusetts Attorney General while a SAAG.

QUESTION

May you participate in the solicitation or receipt of contributions, or host or work in a fundraising event, for a candidate for state, local or federal office?

ANSWER

Yes. Your SAAG appointment would not restrict your political activity pursuant to Section 13. You may therefore solicit or receive contributions for a state, local or federal candidate or political committee.

DISCUSSION

In relevant part, section 13 provides:

No person *employed for compensation*, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever . . . [emphasis added].

M.G.L. c.55, § 13 only applies to persons “employed for compensation” by the Commonwealth or one of its subdivisions. See AO-88-19. Section 13 does not apply to persons who provide services to the Commonwealth as independent contractors. See AO-95-26.

It is the opinion of this office that you are an independent contractor and not a person “employed for compensation” by the Commonwealth for the purposes of Section 13. This decision is based on the following factors: (1) you are paid for your work on the cases by the private insurer of the project; (2) you do not receive a salary or any benefits from the Attorney General’s Office; (3) although you do report to the insurer and to an assistant attorney general regarding the status, strategy and developments in the cases, all of your work on the litigation is performed at your law firm’s private offices; (4) you set your own hours for work on the cases; (5) you provide your own equipment, supplies and facilities; and (6) you use your private law firm’s ancillary services, such as associates, paralegals and support staff.

Since you are not “employed for compensation” by the commonwealth, you may, consistent with the campaign finance law, participate in the solicitation or receipt of contributions for a candidate for state, local or federal² office.

² Federal law does not supersede or preempt M.G.L. c. 55, §§ 13-17, which govern the political activities of state and local employees rather than the source of campaign funds for federal office. See AO-95-39 and FEC Advisory Opinion 1989-27.

This opinion is provided on the basis of representations in your two letters, and the guidance provided is solely within the context of the campaign finance law. Thank you for your interest in the campaign finance law.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS:gb